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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. EFRAIN ESPINOZA, Defendant and Appellant.	H045582 (Santa Clara County Super. Ct. No. C1524210)

Defendant Efrain Espinoza appeals a judgment of conviction after pleading no contest to committing a lewd act by force on a child under 14 years old, oral copulation by force, and rape. Appointed counsel filed an opening brief summarizing the case but raising no issues. We notified defendant of his right to submit written argument on his own behalf, and he responded with two handwritten letters. As we will explain, defendant's arguments do not show error in the trial court proceedings. And after conducting our own review of the record we find no arguable appellate issue. (*People v. Wende* (1979) 25 Cal.3d 436, 440–441.) We will therefore affirm the judgment.

I. BACKGROUND

Defendant sexually abused his stepdaughter for years, starting when she was eight years old. She reported the abuse in high school, and defendant was arrested. In a police interview he admitted having sex with his stepdaughter four times during the preceding six months.

Defendant's stepdaughter testified at the preliminary examination and described how he forced himself on her, touched her breasts, made her orally copulate him, and raped her. Over the previous two years, she estimated defendant raped her twice a week.

The district attorney charged defendant by information with four counts of sexual intercourse with a child 10 years old or younger (Pen. Code, § 288.7, subd. (a)); two counts of lewd acts on a child under 14 years old (Pen. Code, § 288, subd. (a)); three counts of lewd acts on a child under 14 years old by force (Pen. Code, § 288, subd. (b)(1)); five counts of rape by force (Pen. Code, § 261, subd. (a)(2)); three counts of oral copulation by force (Pen. Code, § 288a, subd. (c)(2)(a)); one count of sexual penetration by force (Pen. Code, § 289, subd. (a)(1)(A)); and one count of child endangerment (Pen. Code, § 273a, subd. (b)). Before trial, defendant agreed to a negotiated disposition: He would plead no contest to two counts of committing a lewd act on a child by force, one count of oral copulation by force, and two counts of rape by force. In exchange, the district attorney agreed to dismiss the remaining charges, and that defendant would be sentenced to 38 years in prison.

Defendant pleaded no contest as agreed and the trial court sentenced him to the stipulated prison term of 38 years.

II. DISCUSSION

Defendant makes several contentions in his submissions. He first states that he "[f]ire[d]" his attorney from the public defender's office three times. We view that as a contention that the trial court improperly denied his motions to replace his appointed lawyer. (See *People v. Marsden* (1970) 2 Cal.3d 118.) The denial of a defendant's motion to replace appointed counsel is reviewed on appeal for abuse of discretion. (*People v. Loya* (2016) 1 Cal.App.5th 932, 944.) "In this context, an abuse of discretion does not exist unless the defendant's right to assistance of counsel was substantially impaired from the failure to replace the defendant's attorney." (*Ibid*.) We see no indication of an abuse of discretion here. Each of the three times defendant moved to

replace his counsel, the trial court conducted a hearing and allowed defendant to explain why he felt replacement was necessary. Each time, the trial court considered defendant's reasons as well as information about the representation provided by his appointed counsel, and found that counsel was performing competently and adequately representing defendant's interests. Though defendant had disagreements with his attorney, the right to counsel was not impaired by denial of his motions.

Defendant next states that his attorney visited him only three or four times in jail, and brought an interpreter only two of those times (defendant's primary language is Spanish). He also asserts that his attorney failed to show him the evidence against him. We understand defendant to be asserting that his counsel was ineffective. "In order to establish a claim of ineffective assistance of counsel, defendant bears the burden of demonstrating, first, that counsel's performance was deficient because it 'fell below an objective standard of reasonableness ... under prevailing professional norms.' [Citation.]." (*People v. Ledesma* (2006) 39 Cal.4th 641, 745–746.) Defendant has not met that burden. The record does not show that his attorney's performance was deficient. On the contrary, counsel secured a plea agreement calling for a 38-year determinate sentence and dismissal of most counts defendant faced—even though there was strong evidence of guilt (including a partial confession) and the charges exposed defendant to a life sentence.

Defendant argues that he "d[i]d only 2" of the five charges to which he admitted guilt by pleading no contest. But a guilty or no contest plea convicts a defendant of the charged crime without proof at trial. (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.) It admits every element of the crime charged and is equivalent to a guilty verdict. Issues concerning guilt or innocence are therefore not cognizable on appeal from a guilty or no contest plea. (*Ibid*.)

In his second letter, defendant asks us to reduce his sentence because 38 years is "way to[o] much," particularly since he has not been to prison before. "A trial court's

decision to impose a particular sentence is reviewed for abuse of discretion and will not be disturbed on appeal 'unless its decision is so irrational or arbitrary that no reasonable person could agree with it.' " (*People v. Jones* (2009) 178 Cal.App.4th 853, 860–861.) Defendant was assisted by a Spanish language interpreter at the change of plea hearing and at sentencing. He received the sentence he agreed to in exchange for dismissal of additional charges. And in pronouncing sentence, the trial court indicated it had considered not only the terms of the plea agreement but also the nature of the offenses, the impact on the victim, and the manner the offenses were committed. The 38-year prison sentence was below the statutory maximum of 44 years for the charges to which defendant pleaded no contest. There was no abuse of discretion in imposing the stipulated sentence.

III. DISPOSITION

The judgment is affirmed.

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Grover, J.

WE CONCUR:

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Elia, Acting P. J.

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Mihara, J.